

ASSEMBLY BILL

No. 879

Introduced by Assembly Member Torrico

February 18, 2005

An act to amend Sections 98 and 98.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 879, as introduced, Torrico. Employment law violations: remedies.

Under existing law, if an employee believes an employer has failed to pay wages required by contract or statute, the employee may either file a civil action against the employer or file a wage claim with the Labor Commissioner seeking administrative relief. Where the administrative remedy is pursued, either party may appeal the decision of the Labor Commissioner to the superior court, for a hearing de novo.

This bill would provide that, where an employer fails to file an answer to the administrative complaint, to attend the administrative hearing, and to seek relief for failing to do so, the superior court would not hear the appeal on a de novo basis, but would review the administrative decision only for an abuse of discretion, unless the superior court granted relief to the employer from the administrative decision under specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner ~~shall have the authority is~~ *authorized* to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It ~~shall be~~ *is* within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form ~~as the Labor Commissioner may prescribe~~ *prescribes*, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

1 (d) No pleading other than the complaint and answer of the
2 defendant or defendants shall be required. Both shall be in
3 writing and shall conform to the form and the rules of practice
4 and procedure adopted by the Labor Commissioner.

5 (e) Evidence on matters not pleaded in the answer shall be
6 allowed only on terms and conditions the Labor Commissioner
7 shall impose. In all these cases, the claimant shall be entitled to a
8 continuance for purposes of review of the new evidence.

9 (f) If the defendant fails to appear or answer within the time
10 allowed under this chapter, no default shall be taken against him
11 or her, but the Labor Commissioner shall hear the evidence
12 offered and shall issue an order, decision, or award in accordance
13 with the evidence. A defendant failing to appear or answer, or
14 subsequently contending to be aggrieved in any manner by want
15 of notice of the pendency of the proceedings, may apply to the
16 Labor Commissioner for relief in accordance with Section 473 of
17 the Code of Civil Procedure. The Labor Commissioner may
18 afford this relief. No right to relief, including the claim that the
19 findings or award of the Labor Commissioner or judgment
20 entered thereon are void upon their face, shall accrue to the
21 defendant in any court unless prior application is made to the
22 Labor Commissioner in accordance with this chapter.

23 (g) All hearings conducted pursuant to this chapter are
24 governed by the division and by the rules of practice and
25 procedure adopted by the Labor Commissioner.

26 (h) Whenever a claim is filed under this chapter against a
27 person operating or doing business under a fictitious business
28 name, as defined in Section 17900 of the Business and
29 Professions Code, which relates to the person's business, the
30 division shall inquire at the time of the hearing whether the name
31 of the person is the legal name under which the business or
32 person has been licensed, registered, incorporated, or otherwise
33 authorized to do business.

34 The division may amend an order, decision, or award to
35 conform to the legal name of the business or the person who is
36 the defendant to a wage claim, provided it can be shown that
37 proper service was made on the defendant or his or her agent,
38 unless a judgment had been entered on the order, decision, or
39 award pursuant to subdivision ~~(d)~~ (e) of Section 98.2. The Labor
40 Commissioner may apply to the clerk of the superior court to

1 amend a judgment that has been issued pursuant to a final order,
2 decision, or award to conform to the legal name of the defendant,
3 provided it can be shown that proper service was made on the
4 defendant or his or her agent.

5 SEC. 2. Section 98.2 of the Labor Code is amended to read:

6 98.2. (a) ~~Within~~ *Except as provided in subdivision (b), within*
7 10 days after service of notice of an order, decision, or award ~~the~~
8 ~~parties, any party~~ may seek review by filing an appeal to the
9 superior court, where the appeal shall be heard de novo. A copy
10 of the appeal request shall be served upon the Labor
11 Commissioner by the appellant. For purposes of computing the
12 10-day period after service, Section 1013 of the Code of Civil
13 Procedure is applicable.

14 (b) *Notwithstanding subdivision (a), a party who has failed to*
15 *file an answer, to attend the administrative hearing, and to seek*
16 *administrative relief pursuant to subdivision (f) of Section 98,*
17 *shall not obtain a de novo hearing on appeal, but the superior*
18 *court shall review the administrative order, decision, or award*
19 *for an abuse of discretion only, unless the court finds that the*
20 *appellant is entitled to relief in accordance with Sections 473 or*
21 *473.5 of the Code of Civil Procedure.*

22 (c) Whenever an employer files an appeal pursuant to this
23 section, the employer shall post an undertaking with the
24 reviewing court in the amount of the order, decision, or award.
25 The undertaking shall consist of an appeal bond issued by a
26 licensed surety or a cash deposit with the court in the amount of
27 the order, decision, or award. The employer shall provide written
28 notification to the other parties and the Labor Commissioner of
29 the posting of the undertaking. The undertaking shall be on the
30 condition that, if any judgment is entered in favor of the
31 employee, the employer shall pay the amount owed pursuant to
32 the judgment, and if the appeal is withdrawn or dismissed
33 without entry of judgment, the employer shall pay the amount
34 owed pursuant to the order, decision, or award of the Labor
35 Commissioner unless the parties have executed a settlement
36 agreement for payment of some other amount, in which case the
37 employer shall pay the amount that the employer is obligated to
38 pay under the terms of the settlement agreement. If the employer
39 fails to pay the amount owed within 10 days of entry of the
40 judgment, dismissal, or withdrawal of the appeal, or the

1 execution of a settlement agreement, a portion of the undertaking
2 equal to the amount owed, or the entire undertaking if the amount
3 owed exceeds the undertaking, is forfeited to the employee.

4 ~~(e)–~~

5 (d) If the party seeking review by filing an appeal to the
6 superior court is unsuccessful in the appeal, the court shall
7 determine the costs and reasonable attorney's fees incurred by
8 the other parties to the appeal, and assess that amount as a cost
9 upon the party filing the appeal. An employee is successful if the
10 court awards an amount greater than zero.

11 ~~(d)–~~

12 (e) If no notice of appeal of the order, decision, or award is
13 filed within the period set forth in subdivision (a), the order,
14 decision, or award shall, in the absence of fraud, be deemed the
15 final order.

16 ~~(e)–~~

17 (f) The Labor Commissioner shall file, within 10 days of the
18 order becoming final pursuant to subdivision ~~(d)~~ (e), a certified
19 copy of the final order with the clerk of the superior court of the
20 appropriate county unless a settlement has been reached by the
21 parties and approved by the Labor Commissioner. Judgment shall
22 be entered immediately by the court clerk in conformity
23 therewith. The judgment ~~so entered has~~ *shall then have* the same
24 force and effect as, and ~~is~~ *be* subject to all of the provisions of
25 law relating to, a judgment in a civil action, and may be enforced
26 in the same manner as any other judgment of the court in which
27 it is entered. Enforcement of the judgment shall receive court
28 priority.

29 ~~(f)–~~

30 (g) (1) In order to ensure that judgments are satisfied, the
31 Labor Commissioner may serve upon the judgment debtor,
32 personally or by first-class mail at the last known address of the
33 judgment debtor listed with the division, a form similar to, and
34 requiring the reporting of the same information as, the form
35 approved or adopted by the Judicial Council for purposes of
36 subdivision (a) of Section 116.830 of the Code of Civil
37 Procedure to assist in identifying the nature and location of any
38 assets of the judgment debtor.

39 (2) The judgment debtor shall complete the form and cause it
40 to be delivered to the division at the address listed on the form

1 within 35 days after the form ~~has been~~ *is* served on the judgment
2 debtor, unless the judgment has been satisfied. In case of willful
3 failure by the judgment debtor to comply with this subdivision,
4 the division or the judgment creditor may request the court to
5 apply the sanctions provided in Section 708.170 of the Code of
6 Civil Procedure.

7 ~~(g)~~

8 *(h)* Notwithstanding subdivision ~~(e)~~ *(f)*, the Labor
9 Commissioner may stay execution of any judgment entered upon
10 an order, decision, or award that has become final upon *a*
11 *showing of* good cause ~~appearing therefor~~ and may impose the
12 terms and conditions of the stay of execution. A certified copy of
13 the stay of execution shall be filed with the clerk entering the
14 judgment.

15 ~~(h)~~

16 *(i)* When a judgment is satisfied in fact, other than by
17 execution, the Labor Commissioner may, upon the motion of
18 either party or on its own motion, order entry of satisfaction of
19 judgment. The clerk of the court shall enter a satisfaction of
20 judgment upon the filing of a certified copy of the order.

21 ~~(i)~~

22 *(j)* The Labor Commissioner shall make every reasonable
23 effort to ensure that judgments are satisfied, including taking ~~all~~
24 appropriate legal action and requiring the employer to deposit a
25 bond as provided in Section 240.

26 ~~(j)~~

27 *(k)* The judgment creditor, or the Labor Commissioner as
28 assignee of the judgment creditor, is entitled to court costs and
29 reasonable attorney's fees for enforcing ~~the a judgment that is~~
30 rendered pursuant to this section.